

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

LATOYA BROWN; LAWRENCE BLACKMON;
HERBERT ANTHONY GREEN; KHADAFY
MANNING; QUINNETTA MANNING; MARVIN
MCFIELD; NICHOLAS SINGLETON; STEVEN
SMITH; BESSIE THOMAS; and BETTY JEAN
WILLIAMS TUCKER, individually and on behalf of a
class of all others similarly situated,

Plaintiffs,

v.

MADISON COUNTY, MISSISSIPPI; SHERIFF
RANDALL S. TUCKER, in his official capacity; and
MADISON COUNTY SHERIFF'S DEPUTIES JOHN
DOES #1 through #6, in their individual capacities,

Defendants.

Civil Action No.
3:17-cv-00347-WHB-LRA

**ORAL ARGUMENT
REQUESTED**

**PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTION TO EXCLUDE DESIGNATION
OF REBUTTAL EXPERT WITNESS JUSTIN MCCRARY, PH.D.**

Plaintiffs Latoya Brown, Lawrence Blackmon, Khadafy Manning, Quinnetta Manning, Nicholas Singleton, Steven Smith, Bessie Thomas, and Betty Jean Williams Tucker ("Plaintiffs") respectfully submit this Response in opposition to Defendants' Motion To Exclude Plaintiffs' Untimely Designation of New Expert Witness Justin McCrary, Ph.D. (ECF No. 316) ("Motion") in this civil rights action brought against defendants Madison County, Mississippi ("Madison County") and Sheriff Randall Tucker, sued herein in his official capacity ("Sheriff Tucker," and

with Madison County, “Defendants”). Pursuant to L.U. Civ. R. 7(b)(6)(A), Plaintiffs respectfully request oral argument on Defendants’ Motion.¹

1. Defendants’ Motion seeks to exclude as untimely the Rebuttal Expert Report of Dr. Justin McCrary (“McCrary Rebuttal” or “McCrary R.R.”). In doing so, Defendants completely ignore the Court’s February 27, 2018 Scheduling Order (ECF No. 202, “February 27 Scheduling Order”), which expressly states that the deadline for “*any rebuttal expert reports and/or declarations on behalf of Plaintiffs, and related disclosures, will be July 2, 2018.*” In accordance with the February 27 Scheduling Order, on March 14, 2018, Plaintiffs submitted the Report of Dr. Bryan Ricchetti in support of their Motion for Class Certification (ECF No. 231-1). In response, on May 8, 2018, Defendants submitted the Rebuttal Expert Report of Dwight Steward, Ph.D. RE: Bryan Ricchetti, Ph.D. (ECF No. 267-16, the “Steward Report”). Thus, on July 2, 2018, Plaintiffs properly submitted the McCrary Rebuttal in support of their Reply Memorandum in Further Support of their Motion for Class Certification (ECF No. 304) and in direct rebuttal to newly-raised arguments by Dr. Steward regarding the alleged lack of support for Dr. Ricchetti’s methodology in academic literature.

2. Defendants suggest, without any support, that the February 27 Scheduling Order only permits an expert who previously filed an initial report in support of Plaintiffs’ Motion for Class Certification to then file a rebuttal report. This is wholly unsupported by the February 27 Scheduling Order, which clearly states in paragraph six that “any rebuttal expert reports” submitted by Plaintiffs shall be submitted by July 2, 2018. Furthermore, Federal Rule of Civil

¹ Because the issues presented by Defendants’ Motion overlap with the issues presented by Plaintiffs’ pending Motion for Class Certification (ECF No. 231), Plaintiffs request that argument on the instant Motion should be held jointly with argument on Plaintiffs’ Motion for Class Certification.

Procedure 26(a)(2) imposes no requirement that a rebuttal expert be an initially disclosed expert and courts in this District routinely hold that new experts may properly offer rebuttal reports.

3. The McCrary Rebuttal offers proper and timely rebuttal testimony in direct response to new issues raised by Dr. Steward concerning the academic literature and methodology for conducting statistical analyses of the relationship between crime and other factors. In the Steward Report, Dr. Steward challenged Dr. Ricchetti's statistical methodology and his use of census tract data, claiming that it was unsupported by academic literature or generally accepted methods for analyzing crime and racial discrimination. The McCrary Rebuttal responds to and rebuts these incorrect assertions and therefore falls properly within the scope of rebuttal testimony.

4. Even if the McCrary Rebuttal was not timely designated, its exclusion would be inappropriate under the four factor test set out in *Hamburger v. State Farm Mutual Automobile Insurance Co.*, 361 F.3d 875 (5th Cir. 2004). First, Plaintiffs submitted the McCrary Rebuttal on July 2, 2018 for the simple reason that the McCrary Rebuttal responds to the Steward Report, which was submitted on May 8, 2018. Second, the McCrary Rebuttal is important because it rebuts Dr. Steward's unsupported opinions regarding the relevant academic literature and the generally accepted methods for conducting statistical analysis related to racial discrimination and crime. Third, Defendants will suffer no prejudice from the admission of the McCrary Rebuttal as they never attempted to depose Dr. McCrary and have suffered no increase in costs or delays due to the timing of Mr. McCrary's disclosure. Finally, the availability of a continuance to cure any prejudice is inapplicable here. Defendants waited for nearly a month to file this Motion after the McCrary Rebuttal was submitted and then filed this Motion without conferring with Plaintiffs beforehand or making any efforts to resolve consensually their ostensible timing concerns. This

was contrary to the requirements set forth in Local Rule 37(a) and Paragraph 6(F)(4) of the Case Management Order (ECF No. 30), which require parties to meet and confer before filing a discovery motion like this one.

5. In support of this Response, Plaintiffs submit the accompanying Memorandum of Law, which is incorporated herein as if set forth in full.

WHEREFORE, for the reasons set forth herein and in Plaintiffs' accompanying Memorandum of Law, Defendants' Motion should be denied.

Respectfully submitted on this 20th day of August, 2018.

By: /s/ Joshua Tom
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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2018, I caused the foregoing **RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE PLAINTIFFS' EXPERT WITNESS JUSTIN MCCRARY** to be electronically filed with the Clerk of the Court using the CM/ECF system, through which copies have been served to:

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